

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

DENOYER-GEPPERT COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0073

Decision No. CU 227

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by DENOYER-GEPPERT COMPANY in the amount of \$2,095.78, based upon the asserted loss of payment for merchandise shipped to Cuba.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Illinois and that all times between August 1916 and presentation of this claim on June 18, 1965, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant states that all of its 98 stockholders are United States nationals.

The record contains copies of claimant's invoices as follows:

<u>Invoice No.</u>	<u>Date of shipment</u>	<u>Consignee</u>	<u>Amount</u>
G-1977	8/1/58	Antiga Company	\$136.27
G-6574	8/28/58	"	\$ 34.83
G-11714	11/ 3/58	"	\$ 72.92
G-6781	2/20/59	"	\$ 11.25
G-25738	2/20/59	"	\$417.73
G-28900	4/2/59	"	\$100.80
G-50634	11/27/59	"	\$349.73
G-54617	12/9/59	"	\$365.29
G-81166	5/24/60	"	\$ 50.04
G-40914	8/31/59	Laboratories Lemar	\$556.92

Claimant states that it has not received any of the funds.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban

Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See the Claim of The Schwarzenbach Huber Company, FCSC Claim No. CU-0019; and the Claim of Etna Pozzolana Corporation, FCSC Claim No. CU-0049).

Accordingly, in the instant claim the Commission finds that claimant's property was lost as a result of the intervention by the Government of Cuba and that, in the absence of evidence to the contrary, the loss occurred on September 29, 1959 the date when Cuban Law 568 was published, as to \$773.80.

Furthermore, imprinted on the face of all invoices listed herein are the words "Net Cash 30 Days". Therefore the manifested intention of the contracting parties was that the debts were due and payable thirty days after the date of shipment.

The Commission finds that, in the absence of evidence to the contrary, the loss occurred on December 28, 1959 as to \$349.73, on January 9, 1960 as to \$365.29, on June 24, 1960 as to \$50.04, and on October 1, 1959 as to \$556.92.

The Commission has decided that in payment of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be allowed at the rate of 6% per annum from the date of loss to the date of settlement (see the Claim of American Cast Iron Pipe Company, FCSC Claim No. CU-0249).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

From September 29, 1959 on \$773.80

From December 28, 1959 on \$349.73

From January 9, 1960 on \$365.29

From June 24, 1960 on \$50.04

From October 1, 1959 on \$556.92

CERTIFICATION OF LOSS

The Commission certifies that DENOYER-GEPPERT COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Thousand Ninety-Five Dollars and Seventy-Eight Cents (\$2,095.78), with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

AUG 23 1967

Edward D. Re

Edward D. Re, Chairman

As a true and
correct copy of the
decision of the
Commission
filed on

copy of the decision
entered as the final

SEP 5 1967

Theodore Jaffe

Theodore Jaffe, Commissioner

LaVern R. Dilweg
Chairman of the Commission

LaVern R. Dilweg

LaVern R. Dilweg, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)